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September 18, 2002

Docket Management Facility (USCG 1998-3884)-16
U.S. Department of Transportation
Room PL-401
400 Seventh Street SW
Washington D.C 20590-0001

DEPT OF TRANSPORTATION
RECEIVED
02 SEP 19 AM 9:17

Re: Revision of Deepwater Port Regulations (USCG - 1998-3884)

Dear Sir/Madam:

This letter is submitted in response to the notice of proposed rulemaking ("NPRM") published by the Coast Guard in the Federal Register on May 30, 2002 seeking comments on the Coast Guard's proposed amendments to the Deepwater Port Regulations. 33 CFR parts 148-150 (the "Regulations"). LOOP is the only deepwater port licensed under the Deepwater Port Act of 1974 (the "Act"). LOOP was licensed by the Secretary of Transportation (the "Secretary") in 1977 and commenced operations in 1981. LOOP transports more than 10 percent of all crude oil imported into the United States, and also transports significant quantities of crude oil produced on the United States' Outer Continental Shelf ("OCS"). LOOP is thus uniquely qualified to comment upon the changes proposed in the NPRM. We are encouraged by and supportive of the Coast Guard's effort to modernize the Regulations and offer the following comments to assist the Coast Guard in completing the rulemaking process. A table summarizing LOOP's comments is attached as Appendix A.

A. COMPLETION OF THIS RULEMAKING SHOULD NOT BE DELAYED, EVEN IF THE ACT IS AMENDED

We understand that Congress is currently considering amending the Deepwater Port Act to explicitly include deepwater ports that accept and transport natural gas. If the Act is amended, the Coast Guard will have to revisit the Regulations and amend them further. LOOP encourages the Coast Guard to treat the present rulemaking as separate and distinct from any future rulemaking addressing and incorporating the transportation of natural gas.¹

¹ LOOP is not alone in this recommendation. El Paso Global LNG Company ("El Paso") submitted comments to the Coast Guard in response to the NPRM on July 29, 2002. In its comments, El Paso, a company developing

The Deepwater Port Modernization Act, passed by Congress in 1996, mandated that the Regulations be updated to remove overly burdensome requirements. Pub. L. 104-324, 110 Stat. 3901, 3925 (Oct. 19, 1996) (the "Modernization Act"). The NPRM is, in part, a response to the mandate from Congress. LOOP is presently undergoing a multi-year, multi-million dollar renovation of its offshore facilities. Also, interest is growing in the construction of additional deepwater ports in the Gulf of Mexico. Prompt completion of the present rulemaking will facilitate LOOP's efforts to modernize its facility, and will greatly reduce the uncertainties facing any entity contemplating construction of a new deepwater port.

B. BACKGROUND

The Act creates a three-tiered regulatory structure that is unique to deepwater ports. First, the Act requires that the Secretary promulgate regulations applicable to all deepwater ports. Second, the Act also requires that each deepwater port be individually licensed. Third, the Regulations require that each deepwater port have an operations manual. Thus, in addition to the Act, LOOP is regulated and governed by (i) the Regulations, (ii) its license, and (iii) its operations manual. Such a three-tiered structure can function well, but only if all three elements are structured and coordinated to create a coherent whole.

As originally enacted in 1974, the Act provided no hierarchy or guidance as to the allocation of subjects that should be addressed in Regulations, licenses and operations manuals. Moreover, when the Regulations, LOOP's license and operations manual were first drafted, no one had the benefit of practical experience in the operation and regulation of deepwater ports. Perhaps as a result, the three documents contained overlapping provisions, many of which imposed burdensome requirements upon LOOP that do not apply to comparable oil transfer or offshore facilities. The NPRM recognized these problems and in many aspects addressed them. However, even after the Coast Guard's proposed amendments, LOOP believes that the Regulations can be streamlined to a greater extent than the proposed amendments provide.

Recognizing that this burdensome legal and regulatory system required reform, Congress passed the Deepwater Port Modernization Act some six years ago. As noted by the Coast Guard in the NPRM, the Modernization Act effectively requires that the Coast Guard amend the existing Regulations. The Modernization Act also provides criteria for required regulatory amendments.

First, the Modernization Act provides as one of its purposes to "assure that the regulation of deepwater ports is not more burdensome or stringent than necessary in comparison to the

projects that transport natural gas through offshore locations, recognized that the Coast Guard should finish the present rulemaking and address natural gas deepwater ports separately and subsequently.

regulation of other modes of importing or transporting oil.” The Modernization Act at § 502(a)(2). Thus, in amending the Regulations, the Coast Guard must consider regulations applicable to other oil transportation facilities to assure that deepwater ports are not subject to disproportionately or unnecessarily burdensome requirements.

Another purpose of the Modernization Act was to “promote innovation, flexibility, and efficiency in the management and operation of deepwater ports by removing or reducing any duplicative, unnecessary, or overly burdensome Federal regulations or license provisions.” *Id.* at §502(a)(4). Thus, in amending the Regulations, the Coast Guard must delete or revise regulations that are duplicative, unnecessary or overly burdensome.

Finally, the Modernization Act also amended the Act to rationalize the regulation of deepwater ports. Thus, the Act now provides that:

to the extent practicable, conditions required to carry out the provisions and requirements of [the Act] shall be addressed in license conditions rather than by regulation and, to the extent practicable, the license shall allow a deepwater port’s operating procedures to be stated in an operations manual . . . rather than in detailed and specific license conditions or regulations; except that basic standards and conditions shall be addressed in regulations.²

As explained in the Conference Report, this section of the Modernization Act “restructures the current three-tiered approach of licensing, operations manuals, and regulations into an approach that relies on licenses and operations manuals.” House Report 104-854, Coast Guard Authorization Act of 1996, Conference Report, Sept. 27, 1996 at 113. *See also, Deepwater Port Modernization Act*, House Report 104-692 at 4 (“detailed or facility-specific conditions and requirements . . . are more appropriate for inclusion in the license or operations manual rather than the more cumbersome regulations.”). Thus, with the exception of basic standards and conditions which are appropriately addressed in the Regulations, the Act now provides that a deepwater port’s license and operations manual, rather than regulations, are the preferred vehicle or source of regulatory authority.

In light of the Modernization Act, the following principles should guide the Coast Guard as it amends the Regulations: (1) *Avoid Inconsistency* – clearly, in amending the Regulations, the Coast Guard must avoid any inconsistency with requirements imposed upon LOOP by its license or operations manual; (2) *Avoid Redundancy* – each source of regulatory authority exists for a distinct reason and should address a unique set of governmental concerns. Thus, there is no

² 33 U.S.C. § 1503(e)(1).

reason why a requirement included in LOOP's license or operations manual should be repeated as well in the Regulations. The Regulations are intended to provide basic standards, while an operations manual is to describe how those standards are implemented by a particular port; and (3) *Avoid Unneeded Intrusiveness* – federal agencies are to review and revise regulations so as to achieve intended goals in the most efficient and least intrusive manner. 67 Fed. Reg. 37921, May 30, 2002. LOOP believes this includes favoring private sector market mechanisms whenever they can better achieve the public good presently envisioned by regulations, and to allow private business to set its own standards when practicable.

While differences exist between Outer Continental Shelf ("OCS") facilities, Oil and Hazardous Materials in Bulk ("OHMB") facilities, and deepwater ports, in some respects the facilities are similar. The Modernization Act required the Coast Guard to level the playing field among these facilities and make the regulations governing these facilities more consistent. The NPRM represents a positive move towards consistency and LOOP supports the Coast Guard's efforts. In those areas where there are differences between these different types of facilities, however, it is not appropriate to subject the different facilities to the same regulations.

C. WHAT GOES WHERE?

Clearly, given the three sources of regulatory authority applicable to a deepwater port, there must be some logic or hierarchy pursuant to which the subjects are addressed in one document rather than another. In addition to the hierarchy introduced by the Modernization Act, the very nature of regulations, a license and an operations manual dictates the subject matter or substance that should be contained in each.

Regulations. The Regulations apply to all licensed deepwater ports. Thus, they should not be drafted with any particular port in mind. The Act now provides that the Regulations shall contain basic standards and conditions. This is appropriate insofar as each port's implementation of such basic standards and conditions can be prescribed in its operations manual. Thus, the Regulations should contain only basic standards and conditions that are appropriately imposed upon a broad class of deepwater ports.

License. A deepwater port's license is specific to the particular facility and the issues and policies raised by its operations. Thus, unlike the Regulations, a license should be tailored to the individual facility. A deepwater port license should also avoid detailed and intrusive regulations whenever market-based or performance-based standards can achieve the same goal.

Operations Manual. The Act now provides that, to the degree practicable, operating procedures should be addressed in a deepwater port's operations manual. By its very

nature, such a manual is specific to the unique characteristics and operations of the individual deepwater port. Moreover, proposed amendments to a port's operations manual are reviewed and approved by local Coast Guard officials. These are the individuals most familiar with operations at the port and are thus in the best position to make informed judgments as to proposed amendments. It is therefore appropriate that port-specific and operational issues be addressed in each port's operations manual.

D. ADDITIONAL SECTIONS THAT CAN AND SHOULD BE MOVED TO THE OPERATIONS MANUAL

LOOP appreciates and supports the decision of the Coast Guard to move to each port's operations manual certain of the issues presently addressed in the Regulations. As explained above, and by the Coast Guard in the preamble to the NPRM, this is consistent with the direction contained in the Act as amended in 1996. LOOP submits that the following subjects, also addressed in the Regulations, are more appropriately addressed in each port's operations manual.

1. Personnel Regulations-General

In response to the August 29, 1997 Advanced Notice of Proposed Rulemaking (62 Fed. Reg. 45775), LOOP suggested that the personnel requirements found in §§ 150.201-217 and §§ 150.341-42 of the current Regulations (§§ 150.200-250 and §§ 150.370-75 in the NPRM) be deleted from the Regulations and be addressed instead in each port's operations manual. In the NPRM, the Coast Guard stated that this suggestion was not explained fully. LOOP believes that these particular sections of the Regulations offer perhaps the clearest illustration of regulations that address port-specific subjects that are more appropriately addressed in each port's operations manual.

The ability to determine the personnel requirements of its employees, in cooperation with the local Captain of the Port ("COPT"), is a fundamental key to LOOP's continued success and competitiveness. We submit that the local COPT and LOOP are in the best position to determine the specific needs of the LOOP facility and its operations and that the subjects addressed in the personnel sections of Part 150 should therefore be addressed in each port's operations manual.

This is especially true because the duties, designation, qualifications and training of personnel for tanker navigation and oil transfer procedures may differ for different deepwater ports. By requiring and defining these positions in the Regulations, the Regulations necessarily assume a "one size fits all" approach and, further, that this approach will fit for all time. Moving specification of detailed personnel requirements from the Regulations to the operations manual

will enable the licensee, in consultation with the local COPT, to much more effectively tailor personnel requirements to the conditions at hand. Inclusion of these requirements in the regulations has forced LOOP on several occasions to request formal exemptions under 33 CFR 148, Subpart F, as the qualifications of the available pool of the personnel changed. We submit that the granting of these exemption petitions demonstrates the need for greater flexibility than is available if specific positions and qualifications are "locked in" by the Regulations.

OCS and OHMB regulations do not contain position-specific regulations, defining particular employees and their responsibilities. Instead, they require only an operations manual and that there be a "person in charge." Similarly, personnel requirements issued by the Office of Pipeline Safety ("OPS") for transportation of hazardous liquids by pipeline, 49 CFR Part 195, do not set forth specific requirements. Rather, the OPS' Regulations require operators to establish and document a qualification program.³ 49 CFR § 195.501 *et seq.* (2001). There is no justification for treating deepwater ports differently in regards to personnel than OCS facilities, OHMB facilities or pipelines. On the contrary, as explained above, there are compelling reasons to adopt the model established in these other bodies of regulation. This approach would also be consistent with the policies articulated by Congress in the Modernization Act. Specifically, LOOP recommends that the Coast Guard amend the personnel sections of the Deepwater Port Regulations (§§ 150.201-217 and §§ 150.341-42 of the current Regulations, §§ 150.200-250 and §§ 150.370-75 in the NPRM) to require only a "person in charge" (perhaps characterized as the "port superintendent") with all remaining personnel matters (titles, responsibilities and qualifications) to be addressed on a port-by-port basis in each port's operations manual.⁴ We note in this regard that the NPRM's proposed guidelines for the preparation of an operations manual indicate that these topics should be included in the operations manual (proposed regulations at § 150.15).

2. Personnel Regulations - Emergency Medical Technician

In addition to LOOP's general comment on the Regulations' personnel requirements, LOOP objects to the proposed requirement that an intermediate level emergency medical technician ("EMT") be present during confined space entry. § 150.525 (proposed Regulation § 150.600). In the NPRM, the Coast Guard rightfully eliminated the requirement that deepwater ports have an EMT at all times. In doing so however, it adopted the requirement in the proposed OCS regulations that an EMT with intermediate training be present during confined

³ We note in addition that there are no personnel or operations manual requirements for lightering, the other principal method used to offload very large crude carriers ("VLCC") and ultra large crude carriers ("ULCC").

⁴ El Paso makes similar arguments in their comments and agrees that personnel requirements should be placed in the operations manual rather than the Regulations.

space entry. Applying the OCS regulation to a deepwater port in this situation ignores important differences between these types of facilities. This requirement may be appropriate to OCS platforms, an increasing number of which are located at great distances from U.S. shores. In contrast, LOOP, and likely any additional deepwater ports, are located as close as possible to shore. It takes a helicopter less than thirty minutes to transport someone from LOOP's platform to the nearest hospital. Given the differences between deepwater ports and OCS facilities, as well as LOOP's twenty years of operating history, LOOP submits that this is one area where application of OCS requirements to deepwater ports is inappropriate. Moreover, this is exactly the type of personnel requirement that should be placed in the operations manual.

If the Coast Guard does intend to require that an EMT be present during confined space entry, it should require an EMT with basic training rather than intermediate training. The difference between the basic and the intermediate level of certification involves approximately one hundred hours of classroom participation and an additional one hundred hours of clinical study in an emergency room. Given the speed with which a helicopter can transport an injured person from a deepwater port to a shoreside hospital, basic certification is more than enough. More fundamentally, because these types of issues are port specific, they are best addressed in the operations manual.

3. Other Sections that Should be Addressed in Ports' Operations Manuals

LOOP provides below a list of additional sections of the Regulations which, it believes, address subjects which also should appropriately be moved to the operations manual. Again, LOOP emphasizes its agreement that, in each case, the subject in question should be addressed. In proposing that each subject be addressed in the operations manual, LOOP is merely suggesting that the subjects are operational, may require different treatment for different ports, and should be addressed in the operations manual which is a more flexible document.

- § 150.307 (proposed regulations § 150.310) Radar Surveillance. This section requires that the vessel traffic supervisor maintain radar surveillance of the safety zone in defined circumstances involving tanker or other vessel movement in or around the safety zone. LOOP has no objection to the substance of the requirement, but believes that it is the type of requirement which may be different for different ports. Moreover, technology is rapidly changing and a vessel transponder system or some other active system may be available soon - which would make radar at port facilities obsolete and thus make the Regulations obsolete. LOOP therefore submits that this subject is best addressed in the operations manual.
- § 150.309 (proposed regulations § 150.320) Advisories to Tankers. This section includes detailed requirements with respect to communications between the vessel traffic

supervisor and the master of a tanker in the safety zone. Different deepwater ports may have safety zones of different sizes or configuration. Indeed, since LOOP began operations, the Coast Guard, upon petition, expanded the size and changed the configuration of LOOP's safety zone. The question of when and under what circumstances the vessel traffic supervisor must communicate with the master of a tanker in the safety zone may differ for different deepwater ports and may change in light of operational experience obtained. LOOP therefore believes that this subject is best addressed in each port's operations manual.

- §§ 150.337, 338 and .339 (proposed regulations §§ 150.340, 345 and 350) Navigation in the Safety Zone. These sections impose rules relating to navigation of tankers and other vessels in the safety zone. The requirements imposed by this section have proven unnecessarily restrictive and the Coast Guard has granted LOOP's exemption petition effectively establishing a standard that is different from the standard imposed by the Regulation. We submit that the granting of this petition is a demonstration of the need for flexibility as experience is obtained and lessons are learned regarding the hazards of navigation in and around a port's safety zone. Given the need for this flexibility and the essentially operational nature of the issue, LOOP submits that this subject is best addressed in each port's operations manual.
- §§ 150.341 and .342 (proposed regulations §§ 150.370 and .375) Mooring Master and Assistant Mooring Master. These two sections, like the personnel provisions discussed above, dictate to a deepwater port the way in which it must define job responsibilities and specific tasks that must be performed. This is the type of detailed and operational matter which is best addressed in an operations manual. These particular requirements of the existing Regulations have already been the subject of exemption petitions submitted to, and approved by, the COTP. While these are subjects which certainly should be addressed, addressing them in an operations manual provides greater flexibility to adapt procedures in light of operational experience.
- § 150.413 (proposed regulations § 150.425) Requirements for Oil Transfer. This section imposes detailed requirements relating to the type of inspections and coordination that must be completed before oil transfer operations begin. These type of requirements clearly relate to detailed day-to-day operational issues. While important, LOOP believes that they should be addressed in a port's operations manual rather than in the Regulations. The preamble to the NPRM indicates that the Coast Guard agrees and decided to move this section to the operations manual. The actual text of the rule proposed in the NPRM continues to include this section, however.

- § 150.415 (proposed regulations § 150.430) Requirements for Connections. This section specifies the flange standards or quick connect couplings that may be used at a deepwater port and goes so far as to specify the number of bolts that must be used. Different deepwater ports may elect to use different connections. Moreover, coupling technology changes over time. Most importantly, however, this is again the type of requirement that should appropriately be addressed, but relates to an operational issue that is best addressed in each port's operations manual.
- § 150.753 (proposed regulations § 150.845) Key Personnel: Designations and Qualifications. If LOOP is correct that issues relating to the qualification and responsibilities of key personnel are best addressed in the operations manual, then the requirements relating to the documentation of the designation and qualification of these personnel should likewise be addressed in each port's operations manual.

E. INCORPORATE INDUSTRY STANDARDS INTO THE DEEPWATER PORT REGULATIONS

To avoid intrusive regulation, LOOP believes that the Coast Guard should, to the degree practicable, attempt to incorporate into the Regulations accepted industry standards. In so doing, the Coast Guard will bring regulatory standards into line with existing industry standards, thus alleviating somewhat the burden of complying with governmental regulations. By incorporating industry standards, the Coast Guard will also introduce a greater level of flexibility insofar as changes in industry standards can then quickly and easily be incorporated and adapted to by industry. Again, while the Coast Guard adopted some industry standards in the NPRM, more incorporation can and should be done. Specifically the standards established in the following section of the Regulations should reference and incorporate applicable ABS classification standards.

- § 149.205(c) (proposed regulations § 149.625(c)) Electrical Design Standards. The NPRM retains the current requirement that the electrical design of a deepwater port comply with 46 CFR Subpart J which incorporates and alters NFPA 70 (the National Electrical Code) to address the unique environment of a moving, flexing vessel. In essence, § 149.205(c) requires a deepwater port's stationary platform to be wired like a ship. The Coast Guard's regulations for moving vessels simply should not apply to fixed offshore platforms. In particular, the regulations in 46 CFR Subpart J deviate from the industry standard API RP 400-1997 which embodies the accumulated experience of the offshore oil industry and is the standard that applies to virtually every other bottom-founded installation in the offshore environment. Industry standards have the advantage of incorporating accepted innovations and adopting new technologies more quickly than regulations. LOOP urges the Coast Guard to amend the Regulations to incorporate

industry standards for fixed offshore platforms rather than the standard that applies to moving vessels.

- § 149.402 (proposed regulations § 149.430) Equipment Not Required on a PPC. The NPRM indicates that the Coast Guard is disinclined to amend this section, which requires that lifesaving and firefighting equipment on the pumping platform complex which is not required by the Regulations must be individually approved by the Coast Guard. The requirement for such approval creates an actual disincentive to the placement on the platform of any lifesaving and firefighting equipment which exceeds the minimum levels required by the Regulations. LOOP proposes that, in lieu of obtaining Coast Guard approval, the Coast Guard instead require that any such lifesaving or firefighting equipment comply with applicable industry standards. This seems especially appropriate in light of § 150.503 of the Regulations (proposed regulations § 150.505) which requires generally that each deepwater port licensee maintain such equipment in operative condition or remove it from service.

F. INCORPORATION BY REFERENCE OF STANDARDS ESTABLISHED BY OTHER COAST GUARD REGULATIONS

As noted above, the Modernization Act provides that LOOP should not be subject to more stringent or burdensome regulation than other similar facilities. For this reason, and also to simplify the Regulations themselves and the Coast Guard's oversight role, LOOP believes that standards or requirements established in other bodies of Coast Guard regulation may appropriately be adopted or incorporated in the Deepwater Port Regulations. This is perhaps most obvious with respect to the unnecessarily detailed requirements presently applicable to deepwater ports with respect to lighting beacons and other aids to navigation found in §§ 149.703, .751, .755-.759, .775, .797(e)-(f), .799 and §§ 150.601-.611 (new regulations §§ 149.521, .531-.535, .540, .545(a)(3), .555, .565, .585 and §§ 150.700-.720). Thus, LOOP recommends that these detailed regulations be deleted and replaced with a simple reference to the general standards and requirements contained at 33 CFR Subchapter C. Using similar regulations in this circumstance avoids inconsistency, achieves regulatory goals and enables industry to fulfill its regulatory obligations at less cost and in equally effective manner.

G. SPECIAL REQUIREMENT FOR ON-LOADING PORTS

The existing Regulations (§ 149.321) require that deepwater ports which are capable of loading crude oil onto vessels also have a means for receiving oil residues from such vessels. This makes sense since, as tankers accept crude oil, they are often required to discharge oily ballast water. LOOP does not have the ability to "on load" tankers and thus has never had a means for receiving oil residues from those tankers. The proposed amendment to this section

(§ 149.150) appears to misunderstand this distinction. As proposed, it requires that "each deepwater port that receives oil from vessels must have means for receiving oil residues from those vessels" (emphasis added). This section should be amended, as consistent with the intention of the existing Regulation, to provide that only deepwater ports that load oil onto vessels must have a means for receiving oil residues from those vessels.

H. DISPLACEMENT OF OIL IN AN SPM-OTS WITH WATER

Section 150.421 (proposed regulations § 150.447) requires that a port displace the oil in the port's floating hose strings with water during certain storm conditions or when the SPM will not be used within the next seven days. Experience at LOOP has demonstrated that this provision often creates more safety hazards and pollution risks than it solves. First, as a storm approaches, the operations necessary to displace the oil in a hose string can become extremely dangerous. Second, at least at LOOP, each SPM hose string contains approximately 1000 barrels of liquid. If oil in a hose string is displaced with water, it is then necessary to dispose of 1000 barrels of oily water in an environmentally acceptable manner. Finally, experience has shown that severe weather creates little risk of oil discharge from a hose. In 20 years of operation, LOOP's platform has been evacuated for numerous tropical storms and Hurricane Andrew, a category 3 storm, passed within 40 miles. None of these storms caused damage to LOOP's floating hose strings.

In short, the regulations require a procedure that is dangerous and produces safety and environmental risks in order to prevent a problem that even hurricane conditions have not created. Practically, the requirements created by this section may be a case where the solution is worse than the supposed problem it is intended to address. The Coast Guard itself has recognized this as LOOP has applied for and received an exemption from the Coast Guard relating to this particular requirement. The granting of this exemption serves to illustrate the well intended but potentially pernicious effects of requiring the displacement of oil in a deepwater port's hoses.

I. "GRANDFATHER" EXISTING FACILITIES

As the Regulations are amended, newly constructed deepwater ports will necessarily have to be designed and constructed in accordance with any new or changed design or construction standards. An existing facility should not be expected to instantaneously undertake the expense and disruption of redesigning and reconstructing facilities, however. The OCS NPRM includes a grandfathering provision at § 143.1305 which specifically states that the Design and Equipment regulation changes do not apply to facilities that were: contracted for, construction of began, underwent a major conversion, or relocated before the effective date of the final rule. LOOP

submits that a comparable provision must be included in the Regulations when they are published.

J. GRACE PERIOD FOR OPERATIONS MANUAL

As noted above, LOOP supports the decision of the Coast Guard to remove from the Regulations several provisions and instead require that the subjects they address be included in each port's operations manual. Here too, however, when the amended Regulations are published, some mechanism should be provided to enable a deepwater port like LOOP to review the amended Regulations, prepare conforming amendments to its operations manual, and submit the amended manual for approval. In this regard, LOOP suggests that, when the Regulations are amended, the Coast Guard provide a six-month grace period during which a deepwater port licensee can prepare and submit to the Coast Guard an amended operations manual that complies with the amended Regulations. Operations during this six-month grace period in compliance with the existing operations manual would be deemed compliance with the requirements imposed in the amended regulations.

K. SAFETY AND ENVIRONMENTAL MANAGEMENT PROGRAMS (SEMP)

The Notice of Proposed Rulemaking seeks comments on the feasibility of allowing the voluntary use of safety and environmental management programs (SEMPs) as an alternative or complement to certain regulations on workplace safety and health. LOOP supports the recognition of SEMPs as an alternative or complement to the regulatory structure for deepwater ports contemplated by the Modernization Act. As stated above, basic standards and conditions of deepwater port design, construction and operation are to be set forth in the Regulations. However, the Modernization Act also had as one of its purposes the promotion of innovation, flexibility and efficiency in the management and operation of deepwater ports. Such flexibility would allow each deepwater port licensee to fully coordinate the intent of the Regulations throughout all aspects of operations. This coordination is greatly facilitated through the use of a comprehensive management system such as SEMP, which brings together operator policies, legal and regulatory requirements and commercial strategies in a definitive program, the results of which are auditable and measurable by the operator. LOOP has adopted, and is engaged in a multi-year implementation of a SEMP-type quality management program to continuously improve all aspects of its business operations, with emphasis on workplace safety and health. LOOP therefore strongly supports the voluntary use of a SEMP as an alternative or complement to compliance with workplace safety and health regulations, in keeping with operational flexibility objective of the Modernization Act. LOOP recommends that, if the Regulations are amended to allow for compliance with a SEMP as an alternative to compliance with certain sections of the Regulations, provisions should be included requiring some type of written Coast Guard approval.

This will preclude any confusion or argument that a deepwater port licensee that is complying with a SEMP is somehow failing to comply with applicable regulatory requirements.

L. OPERATIONS MANUAL CONFIDENTIALITY

The tragic events of September 11, 2001, make clear the need for protection of sensitive information relating to national security and the United States' critical infrastructure. A deepwater port is a major transportation conduit for the crude oil on which our national economy depends. Recognizing the unique and important asset that deepwater ports represent, the United States Department of Defense has maintained a long-term interest in LOOP facilities. The Department of Defense has performed periodic security assessments and checks and has endeavored to minimize LOOP's exposure to any form of attack, violation or unauthorized access. Because the operations manual of a deepwater port includes a detailed description – including design drawings and specifications – of the entire facility, as well as sensitive security protocols and emergency response procedures, the confidentiality of a manual is imperative in preventing attacks and ensuring the safety and lives of personnel working at the facility.

An operations manual contains confidential commercial information of critical value to a deepwater port's financial, economic, competitive and security interests. The manual explains in detail the fundamental aspects of a deepwater port's commercial operation including facility resources and design, product transfer, storage and delivery, management and communications procedures, systems checks, emergency protocols, and maintenance and monitoring plans. This type of information is exempted from the Freedom of Information Act ("FOIA"). 5 U.S.C. § 552(b)(4).

Furthermore, a deepwater port's operations manual constitutes a trade secret. Courts have defined the term "trade secret" to mean "a secret, commercially viable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort."⁵ An operations manual provides the full details and design of the plan, process, procedures and facilities that a deepwater port must develop to transport, store and handle crude oil. A deepwater port's operations manual is a blueprint description of its commercial process and is therefore by definition a "trade secret."

The Act reinforces LOOP's concern about confidentiality of operations manuals. Section 14 of the Act preserves all of the FOIA exemptions described in subsection (b) of Section 552 of Title 5 of the U.S. Code. 31 U.S.C. § 1513. In addition, Section 14(b) of the Act

⁵ *Anderson v. Department of Health and Human Services*, 907 F.2d 936, 944 (10th Cir. 1990), citing *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983).

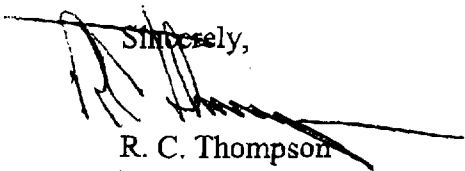
explicitly prohibits disclosure of information about deepwater ports "that concerns or relates to a trade secret" or that is referred to in 18 U.S.C. § 1905. 31 U.S.C. § 1513(b). As explained above, a deepwater port's operational manual is properly considered a trade secret and contains confidential commercial information. Federal law prohibits the disclosure of information that "concerns or relates to the trade secrets, processes, [or] operations . . . of any person, firm, partnership, corporation, or association" (emphasis added). 18 U.S.C. § 1905. While the Act broadly protects against the release of confidential material, we recommend that the Regulations include a section recognizing and confirming the confidentiality of each deepwater port's operations manual.

M. CONCLUSION AND SUMMARY

The preceding LOOP comments are organized under broad thematic headings. They include or address a large number of discrete points. For ease of reference, we have attached as Appendix A a table that lists the sections of the existing and proposed regulations that LOOP has commented upon in numerical order.

LOOP commends the Coast Guard for the significant effort reflected in the NPRM. While LOOP has commented on a number of the proposed amendments, LOOP believes that the Coast Guard has made significant strides towards streamlining and modernizing the regulations as directed in the Modernization Act. We encourage the Coast Guard to complete this rulemaking promptly and are available to discuss our comments with the Coast Guard. Should you have questions following your review of this letter, please do not hesitate to contact CaSandra Cooper-Gates at (504) 363-9282.

Sincerely,



R. C. Thompson
President

APPENDIX A

| | Present Regulation | Proposed Regulation | Subject/ Comment |
|----|--------------------|---------------------|--|
| 1. | New | New | <u>Do not Delay Rulemaking</u> - LNG rulemaking should be treated as a separate rulemaking. |
| 2. | New | New | <u>Operations Manual Confidentiality</u> - security concerns and trade secret confidentiality evidence a need to keep the operations manual confidential. |
| 3. | New | New | <u>Grandfather Existing Facilities</u> - limit design and equipment regulations to new or newly renovated facilities. |
| 4. | New | New | <u>Grace Period for Operations Manual</u> - time should be given for a deepwater port to review the regulatory changes and prepare conforming amendments to its Operations Manual. |
| 5. | New | New | <u>SEMP's</u> . LOOP supports the use of Safety and Environmental Management Programs and recommends that the Coast Guard include provisions governing their use in the Regulations. |
| 6. | § 149.205(c) | § 149.625(c) | <u>Electrical Design Standard</u> - use industry standards for electrical design of offshore platforms rather than regulatory standards for moving vessels. |
| 7. | § 149.321 | § 149.150 | <u>Special Requirement for On-Loading Ports</u> - only those ports that load oil onto vessels should be subject to this requirement. |
| 8. | § 149.402 | § 149.430 | <u>Equipment not Required on a PPC</u> - reference applicable industry standards instead of requiring Coast Guard approval. |

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| 9. | §§ 149.703, .751, .755-.759, .775, .797(e)-(f), .799 and §§ 150.601-.611 | §§ 149.521, .531-.535, .540, .545(a)(3), .555, .565, .585 and §§ 150.700-.720). | <u>Requirements relating to Lighting Beacons and Other Aids to Navigation</u> – for consistency purposes the Coast Guard should incorporate by reference other relevant Coast Guard regulations. |
| 10. | §§ 150.201-217; §§ 150.341-42; § 150.525; § 150.753 | §§ 150.200-250; §§ 150.370-75; § 150.600; § 150.745 | <u>Personnel Regulations</u> – personnel regulations are most appropriately placed in the operations manual. |
| 11. | § 150.307 | § 150.310 | <u>Radar Surveillance</u> – emerging technology may outdate this requirement and it should be placed in the more flexible Operations Manual. |
| 12. | § 150.309 | § 150.320 | <u>Advisories to Tankers</u> – since safety zones vary from port to port these requirements are best placed in the Operations Manual. |
| 13. | §§ 150.337-.339 | §§ 150.340-350 | <u>Navigation in the Safety Zone</u> – these types of regulations are port specific and, as such, are better addressed in the Operations Manual. |
| 14. | § 150.413 | § 150.425 | <u>Requirements for Oil Transfer</u> – this relates to the day-to-day operations of a port and belong in the Operations Manual. |
| 15. | § 150.415 | § 150.430 | <u>Requirements for Connections</u> – specifications such as flange standards, quick connect couplings and the number of bolts are best addressed in the Operations Manual. |
| 16. | § 150.421 | § 150.447 | <u>Displacement of Oil in an SPM-OTS with Water</u> – this regulation creates more safety and environmental hazards than the risk it seeks to address. |